Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order no. 482 of 2003

1. Smt. Geeta Pandey, W/O late Girish Chandra
2. Bhupesh Pandey, minor son of
   Late Girish Chandra Pandey
3. Ashish Pandey, minor, S/O late
   Sri Girish Chandra Pandey,
   Appellant nos. 2 and 3 minors through their
   Mother and natural guardian Smt. Geeta Pandey,
   All R/O village Majhera Garampani,
   District Nainital … **Appellants.**

Versus

1. Yogesh Mishra, S/O Desh Raj Mishra
   R/O House No. Type II-16, Telicum Colony,
   Haldwani, District Nainital.
2. Divisional Manager, The New India
   Assurance Company Ltd. Haldwani,
   Through Division Office, Opposite
   Sessions Court Haldwani
   District Nainital

… **Respondents.**

Sri Akhil Sah, Advocate, learned counsel for the appellants.
Sri T.A. Khan, Advocate, learned counsel for the respondent-Insurance Co.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 08, 2004.

(Per Hon'ble Irshad Hussain, J.)

Through this appeal, under Section 173 of Motor Vehicles Act, 1988 **(*for short the Act*),** the appellant-claimants have challenged the quantum of compensation as well as denial of the interest from the date of filing of the claim petition by the Motor Accident Claims Tribunal in Claim Petition No. 236 of 2002 per judgment and order dated 12-9-2003.

The points raised by the learned counsel for the appellants are as under:-

(1) Whether the Tribunal has incorrectly calculated the dependency by making a deduction to the tune of Rs. 30,000/- from the annual salary of the deceased in view of the standard deduction of Rs. 30,000/- as permitted under the provisions of the Income Tax Act?

(2) Whether the interest had been incorrectly denied from the date of presentation of the claim petition?

Point No.1: The claimants have furnished the salary certificate of othe deceased Girish Chandra Pandey, which was issued by the Principal, Government Inter College, Daulatpur (Gaula Par), district Nainital. The monthly gross-salary of the deceased was Rs. 10,571/- (18-C/2) and on that basis, Form 16 under the relevant Rule of the Income Tax Act (paper no. 25-C/2) was accordingly issued by the Principal showing the annual gross-salary of Rs. 1,19,294/- of the deceased. The deductions, which were permissible under the law to the assessee-deceased were not to be deducted from his salary for calculating the dependency, because at any rate, that amount of deduction would have gone to the pocket of the deceased, if these amounts were not to be deducted for the purposes of calculation of the income tax. The learned Tribunal took the salary of the deceased after taking into account the deductions under the provisions of the Income Tax Act and that was wholly incorrect. Therefore, the submission of the learned counsel for the appellant-claimants is sustainable that these deductions could not have been taken into account to calculate the dependency of the deceased. In other words, the annual gross-salary of the deceased was required to be accepted as Rs. 1,19,294/- instead of Rs. 85,301/-. After deducting 1/3rd (Rs. 39,764-60) towards personal expenses of the deceased, the annual dependency comes to Rs. 79,529.40, which can be rounded to Rs. 79,530/-. There is no dispute about the propriety of multiplier applied in this case. Thus, total loss of

dependency comes to Rs. 79530/- x 13 = 10,33,890/-. Because the above amount, sum of Rs. 5,000/- was awarded towards medical treatment; Rs. 2000/- towards funeral expenses and Rs. 10,000/- towards loss of love and affection and adding these figures, the total amount of compensation, which should have been awarded to the appellant-claimants comes to Rs. 10,50,890/-. The point is answered accordingly.

Point No.2: The learned Tribunal gave 30 days time to the Insurance Company to pay the compensation awarded and in default, it was directed that the interest @ 9% per annum shall be payable on the amount of compensation awarded. This was not according to law as the interest should have been awarded from the date of presentation of the claim petition and to that extent, the submission of the learned counsel for the claimant-appellants need to be accepted. In connection with the rate of interest, the learned counsel for the respondent-Insurance Company submitted that taking into account the large amount of compensation, which now stands to be calculated, the interest @ 9% per annum would be on the excessive side, particularly when lesser rate of interest is normally being given by the nationalised banks. Since the amount of the compensation has been enhanced in view of the above finding, it appears just and proper to award the interest @ 7% per annum from the date of presentation of the claim petition till the date of payment.

Point is answered accordingly.

For the reasons and finding aforesaid, the appeal partly succeeds. The amount awarded by the Tribunal is modified to the extent that the appellant-claimants shall be entitled to compensation amounting to Rs. 10,50,890/-. The claimants shall also be entitled to interest @ 7% per annum from the date of filing of claim petition till the date of payment.

(B.S. Verma, J.) (Irshad Hussain, J.)

RCP